



PUBLIC NOTICE

Federal Communications Commission
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DA 04-3499

Released: November 1, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF CHOICE ONE COMMUNICATIONS, INC. TO CHOICE ONE COMMUNICATIONS REORGANIZED

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-399

Comments Due: November 15, 2004

Reply Comments Due: November 22, 2004

On October 13, 2004, Choice One Communications, Inc. ("Choice One") and its operating subsidiaries¹ filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,² requesting approval to transfer control of its domestic section 214 authorizations pursuant to a reorganization and related transactions (collectively the "Reorganization Plan") of Choice One Communications, Inc.³ On October 28, 2004, Choice One Communications, Inc. filed a notice of its *pro forma* transfer of control to Choice One Communications, Inc. (Debtor-in-Possession)⁴ and an amendment to its pending Section 214

¹ The Choice One operating subsidiaries holding blanket Section 214 authorizations are Choice One Communications of Connecticut Inc.; Choice One Communications of Maine Inc.; Choice One Communications of Massachusetts Inc.; Choice One of New Hampshire Inc.; Choice One Communications of New York Inc.; Choice One Communications of Ohio Inc.; Choice One Communications of Pennsylvania Inc.; Choice One Communications of Rhode Island Inc.; Choice One Communications of Vermont Inc.; Choice One Communications of Virginia Inc.; US Xchange of Illinois, L.L.C.; US Xchange of Indiana L.L.C.; US Xchange of Michigan, L.L.C.; and US Xchange of Wisconsin, L.L.C.

² 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

³ Applicants have also filed an application for consent to transfer authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

⁴ *See* Notification of *Pro Forma* Transfer of Control of International and Domestic Section 214 Authorizations Held by the Operating Subsidiaries of Choice One Communications, Inc., WC Docket No. 04-399 (filed Oct. 28, 2004).

application to identify Choice One-DIP and its operating subsidiaries⁵ as the Transferor and Choice One Communications Reorganized (“Choice One-Reorganized”) as the Transferee (collectively, “Applicants”).⁶

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission’s rules because immediately following the proposed transactions (1) the Applicants and their affiliates would hold less than an 10% share of the interstate, interexchange market; (2) Applicants and their affiliates would provide local exchange service only in areas served by dominant local exchange carriers that are not a party to the transactions and; (3) neither the Applicants nor their affiliates are dominant with respect to any service.⁷

Choice One-DIP is a leading integrated communications provider offering voice and data services, including Internet solutions, to businesses in 29 markets across 12 Northeast and Midwest states.⁸ On October 5, 2004, Choice One filed a prepackaged bankruptcy in the United States Bankruptcy Court for the Southern District of New York and becoming a debtor-in-possession. Upon Choice One-DIP’s emergence from bankruptcy, the 10% or greater owners of Choice One-Reorganized, will be as follows: Quantum Partners LDC, (“Quantum LDC”) 19.5%; General Electric Capital Corporation,⁹ 14.4%; and Varde Investment Partners, L.P. Quantum LDC, a Cayman Islands company, is wholly-owned by Quantum Emerging Growth Partners C.V. (“Quantum EGP”).¹⁰ The 19.5% equity interest in Choice One-Reorganized held by Quantum

⁵ See *supra* note 1.

⁶ Applicants also provided additional ownership information as required by section 63.03 and 63.04 of the Commission’s rules. 47 C.F.R. §§ 63.03 and 63.04. See The Application for Approval of a Transfer of Control of the Domestic and International Section 214 Authorizations held by Choice One Communications Inc. (Debtor-in-Possession), to Choice One Communications Inc. (Reorganized), WC Docket No. 04-399 (filed Oct. 28, 2004) (“Amended Application”).

⁷ 47 C.F.R. § 63.03(b)(2)(i).

⁸ Choice One DIP includes the following operating subsidiaries operating pursuant to a blanket domestic Section 214 authorization: Choice One Communications of Connecticut, Inc.; Choice One Communications of Maine, Inc.; Choice One Communications of Massachusetts Inc.; Choice One of New Hampshire Inc.; Choice One Communications of New York Inc.; Choice One Communications of Ohio Inc.; Choice One Communications of Pennsylvania Inc.; Choice One Communications of Rhode Island Inc.; Choice One Communications of Virginia Inc.; US Xchange of Illinois, L.L.C.; US Xchange of Indiana L.L.C.; US Xchange of Michigan, L.L.C.; and US Xchange of Wisconsin, L.L.C.

⁹ General Electric Capital Corporation is wholly-owned by General Electric Capital Services Inc., which in turn is a wholly owned subsidiary of General Electric Company (“GE”), a widely held public corporation.

¹⁰ Quantum Endowment Fund N.V. (“QEF NV”) is a limited partner of Quantum EGP with an equity interest of over 50%. No entity has an ownership or voting interest of 10% or more in QEF NV. Emerging Growth Fund Management C.V. (“Emerging Growth”) is the managing general partner of Quantum EGP. Quattro N.V., wholly-owned by George Soros, is the managing general partner of Emerging Growth. George Soros also owns Soros Fund Management LLC.

LDC is voted by Soros Fund Management LLC, through George Soros pursuant to a management agreement between Soros Fund Management LLC and Quantum LDC.

Varde Investment Partners, L.P., a 10% or greater owner of Choice One-Reorganized, is controlled by its general partner, Varde Investment Partners G.P., LLC ("VIP G.P.").¹¹ The Applicants confirm that there are no other entities that have a 10% or greater direct or indirect ownership interest in, or ability to exercise control over, Choice One-Reorganized.

Pursuant to the Reorganization Plan, Choice One-DIP's approximately \$404 million of outstanding senior debt would be converted into \$175 million of new senior secured term notes payable over six years and 90% of the common stock of the reorganized company. Choice One-DIP's approximately \$252 million of outstanding subordinated debt would be converted into the other 10% of such common stock and into two series of seven-year warrants to purchase additional shares of common stock from the reorganized company. Upon completion of the Reorganization Plan, Choice One-Reorganized will obtain a revolving credit facility of up to \$25 million secured by substantially all of its assets from a subset of its senior lenders to provide for ongoing working capital requirements.

Applicants assert that the Reorganization Plan and related transactions will serve the public interest, convenience and necessity since they will be seamless to end users, Choice One-DIP and its operating subsidiaries will continue to provide the high-quality services they provide today to consumers through Choice One-Reorganized, and reorganized company will emerge from bankruptcy significantly stronger financially, thereby strengthening its ability to continue to provide competitive telecommunications services in the future. Applicants state that the Reorganization Plan and related transactions are designed to remedy the debt situation, and enhance Choice One-DIP's ability to meet the needs of its clients and continue to execute its strategy. Applicants assert that, in addition to debt reduction, the proposed restructuring will increase its liquidity. Applicants also state that, with a strengthened balance sheet, increased liquidity, \$320 million in recurring revenue, and more than 100,000 clients on its network, Choice One-Reorganized will be well-positioned to be a leading communications company in each of its markets in the future.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before November 15, 2004 and reply comments on or before November 22, 2004.**¹² Unless otherwise notified by the Commission, Applicants are permitted to transfer assets

¹¹ Varde Partners, L.P. is a managing member of VIP G.P.. Varde Partners, L.P.'s general partner is Varde Partners, Inc. The 10% or greater owners of Varde Partners, Inc. are as follows: George G. Hicks, 33.3%; Gregory S. McMillan, 33.3% and Marcia L. Page, 33.3%.

¹² See 47 C.F.R. § 63.03(a).

on the 31st day after the date of this notice.¹³ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;

¹³ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- (3) Kimberly Jackson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5- Washington, D.C. 20554; e-mail: kimberly.jackson@fcc.gov;
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (6) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Kimberly Jackson at (202) 418-7393.

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